FILED
JUL 31 1941
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1941

314-65

AMANTA S. MAIER,
Petitioner,

vs.

THE CONTINENTAL OIL COMPANY,
Respondent.

No. 326

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

WILLIAM H. THOMPSON,
Indianapolis, Indiana,
ALLEN K. SWANN,
Evansville, Indiana,
ARTHUR S. WILSON,
CLAUDE A. SMITH,
VANDEVEER & KINTNER,
Princeton, Indiana,
PERRY E. O'NEAL,
PATRICK J. SMITH,
Indianapolis, Indiana,
Counsel for Petitioner.

MARK GRAY CO., INDIANAPOLIS

Subject Index

	Page
Petition for Writ of Certiorari	1–13
Facts	3–9
Jurisdiction	3
Prayer	13
Questions Presented	10–11
Reasons Relied Upon for Allowance of Writ	11–12
Statement of Facts	3–9
Summary Statement of Matters Involved	2–3
Brief	14–34
Appendix	35
Argument	16–33
Assignments of Error	15–16
Jurisdiction	15
Opinions of Courts Below	14–15
Statement of Case	15

TABLE OF CASES

	Page
Adamson vs. *Gilliland*, 242 U. S. 350, 353..	31
Balwin, et al. vs. *Kerlin, et al.* (1874), 46 Ind. 426, 431-432.....	19
Buchanan vs. *Whitam* (1871), 36 Ind. 257	28
Busjahm vs. *McLean* (1891), 3 Ind. App. 281, 283	30
Cochran vs. *Nebeker* (1874), 48 Ind. 459, 462	30
Craven, et al. vs. *Butterfield, et al.* (1881), 80 Ind. 503, 509	12–24
Dingman vs. *Kelly* (1856), 7 Ind. 717, 718.	11–18
Edens vs. *Miller* (1896), 147 Ind. 208, 211.	11–19–20
Equitable Life Insurance Co. of Iowa vs. *Halsey, Stuart & Company*, 85 L. ed. (Adv.) 631	10–16–33
Erie Railroad vs. *Tompkins*, 304 U. S. 64, 82 L. ed. 1188.....	10–15
Feichter vs. *Korn* (1918), 70 Ind. App. 205	19–20
First National Bank of Centreville vs. *Gough, et al.* (1878), 61 Ind. 147.....	12–26
Guilford Const. Co. vs. *Biggs* (1939, C. C. A. 4), 102 F. (2d) 46, 47.....	31
Hosford vs. *Johnson* (1881), 74 Ind. 479, 485	32
Howell, et al. vs. *Zerbee* (1866), 26 Ind. 214	28
Miller vs. *Campbell* (1875), 52 Ind. 125, 127	19
Nash vs. *Berkmier* (1882), 83 Ind. 536...	18
Pabst Brewing Co. vs. *Schuster* (1913), 55 Ind. App. 375, 381.....	32

Page

Porter vs. *Byrne* (1858), 10 Ind. 146, 148. 19
Pulse, et al. vs. *Miller, et al.* (1881), 81 Ind. 190, 191, 192 12–20
Remm vs. *Landon* (1909), 43 Ind. App. 91. 18
Ridgway vs. *Ingram* (1875), 50 Ind. 145, 147, 148 12–19–21
Robbins vs. *Magee, et al.* (1881), 76 Ind. 381, 392-394 12–30
Shoemaker vs. *McMonigle* (1882), 86 Ind. 421, 422, 423 28
Soroka vs. *Knott* (1929), 90 Ind. App. 649, 653 17
Stoner vs. *New York Life Insurance Co.*, 85 L. ed. (Adv.) 275 10
Thompson, et al. vs. *Griffith* (1922), 79 Ind. App. 60, 61 12–27
Wichita Royalty Company, et al. vs. *City National Bank*, 306 U. S. 103 10–15
Wilson vs. *Johnson* (1895), 145 Ind. 41, 43, 44 11–19
Wilstach vs. *Heyd, et al.* (1889), 122 Ind. 574, 578 12–22

STATUTES

Section 240 (a) Judicial Code as amended by the Acts of February 13, 1925, C-229 (43 Stat. 938); June 7, 1934, C-426 (48 Stat. 926), 28 United States Code 347.. 3–16
Section 1, Ch. 42, 1 R. S. 1852, Burns' Indiana Statutes Annotated, 1933, Sec. 33-101 17

IN THE

Supreme Court of the United States

October Term, 1941

AMANTA S. MAIER,
Petitioner,

vs.

THE CONTINENTAL OIL COMPANY,
Respondent.

No.....

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

To the Honorable, the Supreme Court of the United States:

Amanta S. Maier, respectfully petitioning, shows the Court:

I.

Summary Statement of Matters Involved.

A. Nature of the action and decrees below.

This is a suit commenced by petitioner against respondent to annul and cancel and expunge from the public records a purported oil and gas lease on the ground that the same was void. Respondent filed a counterclaim asking a declaratory judgment that the lease was valid.

Trial was had by the court without the intervention of a jury. The court made findings of facts (R. 111 to 168) and stated its conclusions of law thereon to the effect that the law was with the petitioner and the lease was void (R. 168).

Judgment was entered for petitioner. (R. 169, 170.)

Respondent appealed to the Circuit Court of Appeals for the Seventh Circuit (R. 179). The cause was reversed and the lease held to be valid. The opinion of Judge Kerner (R. 199-206) concurred in by Judge Major by separate opinion (R. 206-208) held (1) the lease was not void for lack of description (R. 203-204); (2) the lease was not void for insufficient land identification (R. 204-205); (3) the lease was not invalidated by the act of respondent's assignor in changing the land descriptions after he had assigned the purported lease to respondent and after execution by petitioner and prior to recording. (R. 206.)

Judge Briggle dissented on the ground that the majority opinion did not follow the applicable Indiana law

and held: "I am of the opinion that the District Court properly applied the Indiana law." (R. 208.)

Petitioner filed her petition for a rehearing within the time allowed (R. 208, 209) which was denied by the Circuit Court of Appeals without opinion (R. 217).

II.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Acts of February 13, 1925, C-229 (43 Stat. 938); June 7, 1934, C-426 (48 Stat. 926, 28 U. S. C. 347).

The opinion of the Circuit Court of Appeals was filed and a decree entered on February 21, 1941 (R. 208), petitioner's petition for a rehearing was filed within the time allowed by the rules of said court, to-wit: on March 7, 1941 (R. 209) and was denied by the court without opinion on May 17, 1941 (R. 217).

This petition for certiorari was filed before the expiration of three months from May 17, 1941.

III.

STATEMENT OF FACTS.

Amanta S. Maier, petitioner, after the death of her husband, in January, 1937 (R. 96), became the owner of a substantial block of farm land in Gibson and Posey Counties, Indiana (R. 40, Finding No. 1, R. 111).

Late in May or early in June, 1937, one J. H. McClurkin (now deceased), respondent's assignor, met

petitioner and told her he had formerly been a geologist and was interested in that section of the country as oil territory and was looking for acreage (R. 40). McClurkin called on Mrs. Maier almost every day. She saw him ten or eleven times (R. 40). On one of the occasions McClurkin brought with him two lease forms which he filled out. On July 12, 1937 (R. 41) Mrs. Maier signed one copy of the lease form and retained it. (R. 40.) The lease form was partly printed, partly written, and partly blank. It contained no land descriptions; the portion of the form reserved therefor was left blank (R. 40, PX 1, R. 41-44, offered R. 41; Finding No. 2 R. 111-117).

Mrs. Maier was paid $1.00 as the total and sole consideration for the purported lease devoid of land descriptions, which after unauthorized material alterations McClurkin and his assignee, the respondent, sought to enforce against more than 2500 acres of land. (R. 22, 25, 27, 201.)

About two weeks subsequent to July 12, 1937, McClurkin delivered to Mrs. Maier a typewritten memorandum (R. 44, PX 2, R. 45, offered R. 45; Finding No. 3, R. 117-121) saying "Here is a copy of the descriptions that I have left with your lease at Griffin. You take this copy and put it onto your lease."[1] (R. 44, Finding No. 3, R. 117-121, 121.)

On July 27, 1937, Mrs. Maier, pursuant to McClurkin's request (R. 44, Finding No. 4, R. 121), went before a notary and signed and acknowledged a partly

---

[1] Under Indiana law many of the descriptions on PX 2 are insufficient identifications of land to demise it as we show in the brief at page 24.

printed, partly written and partly blank form of oil and gas lease. (R. 45, 46, Finding No. 5, R. 121-127). There was attached to the back of the form either by a pin or clip a typewritten sheet of land descriptions similar to the typewritten sheet (PX 2, R. 45, offered R. 45) left with Mrs. Maier by McClurkin earlier in July (R. 46).

The lease form signed by Mrs. Maier on July 12, 1937, and retained by her contained no reference to the typewritten sheet of land descriptions (PX 2, R. 45, offered R. 45) delivered to her by McClurkin about two weeks subsequent to July 12, 1937. (R. 44.) The land descriptions (PX 2) contained no reference to the lease form (R. 45, PX 2, R. 45, offered R. 45, Finding No. 7, R. 127).

The lease form signed and acknowledged by Mrs. Maier before the notary on July 27, 1937, contained no reference to the sheet of typewritten descriptions pinned or clipped to the back of the lease form nor did the descriptions contain any reference to the lease form (R. 46, Finding No. 8, R. 127-128).

After Mrs. Maier had signed and acknowledged the lease form with land descriptions pinned or clipped to the back thereof, on July 27, 1937, she handed it back to the notary (R. 46) and did not see it again (R. 47).

On July 18, 1937, McClurkin wrote a letter to respondent offering it the land he purported to have under lease (DX 1, R. 66, offered R. 65).

On August 24, 1937, McClurkin and wife granted to respondent the right to conduct certain geophysical and geological surveys upon the land on which McClurkin purported to have a lease and which included

some of petitioner's lands (PX 16, R. 107-110, 108, offered R. 107, Finding No. 16, R. 139, 143, 140). After McClurkin entered into the contract with respondent on the 24th of August, 1937, he prepared and pasted in the blank spaces on the face of the oil and gas lease form signed by petitioner on the 27th day of July, 1937, a typewritten sheet containing the exact words and figures as contained on a similar sheet enclosed in a letter from McClurkin to Mrs. Maier (PX 4-B, R. 48, offered R. 48), dated September 28, 1937 (R. 46, Finding No. 12, R. 131-138, Finding No. 14, R. 144), received by her on September 30, 1937 (R. 53) hereafter referred to.

The typewritten sheet of land descriptions pasted on the front of the lease form which was recorded by McClurkin after assignment to respondent, was not the same as the typewritten sheet of land descriptions pinned or clipped to the lease form signed by petitioner on July 27, 1937. PX 2 (R. 45, offered R. 45) is the list of land descriptions given petitioner by McClurkin. At that time McClurkin said: "Here is a copy of the descriptions that I have left with your lease at Griffin . . ." (R. 44.)

The land descriptions pasted to the face of PX 3 (R. 46, offered R. 46) are not the same as those contained on PX 2 (R. 45).

A chart showing the land descriptions as originally prepared and as later altered is attached to the brief as Appendix A.

The pasting was done without the knowledge or consent of petitioner, nor was it thereafter submitted to petitioner for her signature and acknowledgment nor

did she receive any consideration therefor (Finding No. 19, R. 149).

On September 25, 1937, McClurkin and wife assigned the pretended Maier lease to respondent in accordance with their agreement (PX 16, R. 107-110, 108, offered R. 107) of August 24, 1937, to do so (R. 50-51, PX 6 R. 50, offered R. 50, Finding No. 15 R. 145-147).

On September 29, 1937, the pretended lease was recorded with the Recorder of Gibson County, Indiana (R. 53, Finding No. 12, R. 131-138).

Petitioner received on September 30th a letter under date of September 28, 1937, above referred to, which McClurkin wrote her, saying that "corrections were made in descriptions in lease you executed to *us* so as to *eliminate* mention of Forest reservations, and *we* ask that you kindly attach the enclosed corrected description on your copy of the lease, as the enclosed description is the one that will go on record . . ." (Emphasis supplied) (R. 48, PX 4-A, R. 48, offered R. 48, Findings No. 9 and No. 10, R. 128-129).

The description enclosed in the September 28th letter (PX 4-B R. 48, offered R. 48) was identical with the list pasted on the front of PX 3 (R. 46) except that in the sixth line the description which read "Pt. of Sec. 11 T 3 SR 14 W (fraction) containing 82.32" had three horizontal lines drawn through the first figure "1" in the number "11," and in the left margin there was written "should be pt. S 1." (R. 48.)

After the pretended lease was recorded, McClurkin demanded that the Gibson County recorder return it to

him "in order that he might make some corrections on it." (R. 61, Finding No. 16, R. 148.)

The record in the Recorder's office in respect of the description was altered after the pretended lease was recorded. (R. 60, Findings No. 17 and 18, R. 148.)

On October 27, 1937, McClurkin came to petitioner's home and left two leases with land description pasted on the face. Neither was ever signed by petitioner. (R. 48, 49, PX 5-A, 5 B, R. 49-50, offered R. 49, Finding No. 20, R. 149.) At that time petitioner informed McClurkin that he had no lease on her lands, to which McClurkin replied that it didn't matter whether he did or not. (R. 49, 60, Finding No. 21, R. 163.)

Within a few days after October 27, petitioner met McClurkin at a hotel, when she again told him he had no lease, which McClurkin admitted. (R. 53, 54, Finding No. 22, R. 163.)

In June, 1938, respondent voluntarily deposited in a bank in Indiana to petitioner's credit the sum of $256.90 as deferred rental under the purported lease, of which deposit petitioner did not know (R. 96) and of which she received no notice (R. 96, Findings No. 23 and 24, R. 163). Petitioner carried an account of from five to eight thousand dollars to operate her farm (R. 95, 105, Finding No. 25, R. 164). Deposits of approximately the same amounts were made in the account, sometimes two or three times a month (R. 96). Upon learning of the deposit, petitioner instructed the bank to return the sum to respondent (R. 101, 102, PX 19, R. 102, offered R. 102, 103, Finding No. 26, R. 164) which it did. (R. 103, PX 20, R. 103, offered R. 103). Respon-

dent returned the bank draft (R. 104, PX 21-A and 21-B, R. 103, offered R. 103).

Petitioner tendered and returned to McClurkin the one dollar, the consideration paid her for the pretended lease (R. 97, Finding No. 30, R. 167).

In December, 1938, E. J. Bergundthal, a lease buyer for respondent, called on petitioner (R. 54, 85) bringing seven leases with him for petitioner's Gibson County land (R. 54, 99, PX 8-A, 8-B, 9-A, 9-B, 10-A, 10-B, 11-A, 11-B, 12-A, 12-B, 13-A, 13-B, 14-A and 14-B, R. 55, 56, offered R. 55, Finding No. 28, R. 165). On petitioner's instructions the leases were taken to her attorney (R. 87). Petitioner refused to sign and execute these leases to respondent (R. 88, 89).

On December 27, 1938, after the commencement of this action on December 21, 1938, respondent recorded the assignment from McClurkin of the purported lease. (R. 52, Finding No. 31, R. 168).

The Circuit Court of Appeals said:

> "As a result of *appellant's operations* a discovery well was brought in in the Gibson County oil field (not on appellee's land) December 14, 1938, and seven days later, on December 21, 1938, she filed the present suit." (R. 201.)

It is not the fact that as a result of appellant's operations a discovery well was brought in. Such was not found by the trial court, and such was not contended by any party during the entire course of this litigation.

IV.

THE QUESTIONS PRESENTED.

Upon the record and the opinion of the Circuit Court of Appeals there is presented the following important question:

1. Whether the Circuit Court of Appeals wholly disregarded the applicable Indiana law (dissenting opinion R. 208) and thus violated the rule established by this Court in *Erie Railroad* vs. *Tompkins*, 304 U. S. 64, 82 L. ed. 1188, *Stoner* vs. *New York Life Insurance Co.*, 85 L. ed. (Adv.) 275, *Wichita Royalty Company et al.* vs. *City National Bank*, 306 U. S. 103 and *Equitable Life Insurance Co. of Iowa* vs. *Halsey, Stuart & Company*, 85 L. ed. (Adv.) 631, in deciding as follows:

(a) That the partly printed, partly written and partly blank lease form signed by petitioner, containing no description of the land purportedly leased, is valid and binding (R. 203-204).

(b) That the typewritten sheet of land descriptions pinned or clipped to the signed lease form which is not referred to in the lease form or which typewritten sheet makes no reference to the lease form, constitutes a valid and binding lease.

(c) That land descriptions such as "Pt of Fract. Sect. 36 T 2 SR 14 W containing 49.40 acres"; "Pt of W ½ of NW ¼ Sec. 4 T 3 SR 13 W containing 1.00 acres"; "Pt. fr. Sec. 6 T 3 SR 13 W

containing 62.99 acres," are insufficient identifications of land to demise it. (R. 204-205.)

(d) That the altering in a material respect of the land descriptions without petitioner's knowledge or consent did not invalidate the purported lease so as to bar respondent from affirmative relief. (R. 206.)

V.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The Circuit Court of Appeals for the Seventh Circuit has decided an important question of local law in conflict with the applicable decisions of the appellate courts of Indiana in disregard of the rule established by this court in *Erie Railroad Co.* vs. *Tompkins*, 304 U. S. 64, and subsequent cases announcing the same rule, in that it refused to follow the Indiana decisions set out below which hold:

(a) A lease containing no descriptions invalid.

Dingman vs. *Kelly* (1856) 7 Ind. 717, 718;

Wilson vs. *Johnson* (1895) 145 Ind. 41, 43, 44;

Edens vs. *Miller* (1896) 147 Ind. 208, 211.

(b) Descriptions contained in an instrument other than the contract of conveyance must be clearly referred to and identified by the contract

signed by the party sought to be charged to be binding on such party under the Indiana statute of frauds.

Pulse, et al. vs. *Miller, et al.* (1881) 81 Ind. 190, 191, 192;

Ridgway vs. *Ingram* (1875) 50 Ind. 145, 147, 148;

Wilstach vs. *Heyd, et al.* (1889) 122 Ind. 574, 578.

(c) Land descriptions such as "Pt of Fract. Sect. 36 T 2 SR 14 W containing 49.40 acres"; "Pt of W ½ of NW ¼ Sec 4 T 3 SR 13 W containing 1.00 acres" are insufficient identifications to demise the land. (R. 204-205.)

Craven, et al. vs. *Butterfield, et al.* (1881) 80 Ind. 503, 509;

First National Bank of Centreville vs. *Gough, et al.* (1878) 61 Ind. 147;

Thompson, et al. vs. *Griffith* (1922) 79 Ind. App. 60, 61.

(d) The material alterations of the descriptions made by McClurkin, are presumptively fraudulent as to grantor—petitioner, and respondent can maintain no affirmative defense thereon.

Robbins vs. *Magee, et al.* (1881) 76 Ind. 381, 392-394.

WHEREFORE, petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for its review and determination on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its dockets No. 7423, *Amanta S. Maier* vs. *The Continental Oil Company*, and that the decree of said United States Circuit Court of Appeals in said cause be reversed by this Court, and that the petitioner have such other and further relief in the premises as to this Court may seem just.

WILLIAM H. THOMPSON,
Indianapolis, Indiana,

ALLEN K. SWANN,
Evansville, Indiana,

ARTHUR S. WILSON,
CLAUDE A. SMITH,
VANDEVEER & KINTNER,
Princeton, Indiana,

PERRY E. O'NEAL,
PATRICK J. SMITH,
Indianapolis, Indiana,

Counsel for Petitioner.

IN THE

Supreme Court of the United States

October Term, 1941

AMANTA S. MAIER,
Petitioner,

vs.

THE CONTINENTAL OIL COMPANY,
Respondent.

No.....

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

THE OPINIONS OF THE COURTS BELOW.

The District Court neither gave nor filed a written opinion, but found the facts specially (R. 111-168) and stated thereon its conclusions of law (R. 168).

The opinion of the Circuit Court of Appeals filed on February 21, 1941, appears at pages 199 to and includ-

ing 208 of the record, and is reported in 120 F. (2d) 237-242. The concurring opinion appears at 206-208, and the dissenting opinion at 208 of the record.

No opinion of the Circuit Court of Appeals was filed in overruling the petitioner's petition for a rehearing (R. 217).

II.

JURISDICTION.

A statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction is set out in the petition for writ of certiorari at page 3.

III.

STATEMENT OF THE CASE.

A full statement of the case having been given in the petition for certiorari, for brevity is not here repeated.

IV.

ASSIGNMENTS OF ERROR.

The Circuit Court of Appeals erred in the following particulars:

1. In refusing to follow the rule announced by this Court in *Erie Railroad Co.* vs. *Tompkins,* 304 U. S. 64, *Wichita Royalty Company et al.* vs. *City*

National Bank, 306 U. S. 103; *Equitable Life Insurance Co. of Iowa* vs. *Halsey, Stuart & Co.*, 85 L. ed. (Adv.) 631, and similar cases, in that the Circuit Court of Appeals refused to follow the controlling Indiana decisions which hold

(a) that a lease containing no land descriptions is invalid;

(b) that a typewritten sheet of land descriptions pinned or clipped to a lease form making no reference to the lease form and the lease form making no reference to the descriptions, is not a binding and valid lease;

(c) that land descriptions such "Pt. of Fract. Sect. 36 T 2 SR 14 W containing 49.40 acres"; "Pt. of W ½ of NW ¼ Sec. 4 T 3 SR 13 W containing 1.00 acres, and similar descriptions on which respondent relies (R. 45, 46, 47, 50) are insufficient identifications of land to demise it; and

(d) that the altering in a material respect of the land descriptions without grantor's (petitioner's) knowledge or consent invalidated a lease so as to bar affirmative relief to one such as respondent.

V.

ARGUMENT.

A.

Complete jurisdiction in the United States Supreme Court is shown by the record since this is a civil case in the United States Court of Appeals for the Seventh Circuit. The petitioner was a party to such case (R. 199) Judicial Code Sec. 240 (a) amended Feb-

ruary 13, 1925, June 7, 1934 (43 Stat. 938; 48 Stat. 926, 28 U. S. C. 347).

B.

The Circuit Court of Appeals held that the lease was not void for lack of descriptions (R. 203, 204).

The Indiana Statute of Frauds provides in part that:

> "No action shall be brought in any of the following cases * * *
>
> "unless the promise, contract or agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, excepting, however, leases not exceeding the term of three (3) years."
>
> (Sec. 1, Ch. 42, 1 R. S. 1852, Burns' Indiana Statutes Annotated, 1933, Sec. 33-101.)

The lease form in question here provided in respect of the term as follows:

> "It is agreed that this lease shall remain in force for a period of ten years from this date and as long thereafter as oil and gas or either of them is produced from said land by lessee." (R. 41.)

In *Soroka* vs. *Knott* (1929) 90 Ind. App. 649, 653, it was said:

> "* * * A lease for a term of more than three years, must, in order to be binding, be in writing."

The same rule has been announced in *Remm* vs. *Landon* (1909) 43 Ind. App. 91; *Nash* vs. *Berkmier* (1882) 83 Ind. 536.

The lease form which petitioner signed on July 12, 1937, was partly written, partly printed, and partly blank (R. 40, PX 1 R. 41-44, offered R. 41; Finding No. 2 111-117). It contained no land descriptions of any character (R. 40).

Respondent's assignor delivered to petitioner about two weeks after she signed the lease form (PX 1) a typewritten list of descriptions (PX 2, R. 45, offered R. 45), saying: "You take this copy and put it onto your lease" (R. 44, Finding No. 3 R. 117-121). The lease form made no reference to the typewritten sheet nor did the typewritten sheet make any reference to the lease form.

Under Indiana law the lands of petitioner were not thereby demised to respondent's assignor McClurkin.

Dingman vs. *Kelly* (1856) 7 Ind. 717, 718, was an action by Kelly against Dingman upon a written guaranty of the latter that one Jewett would perform a lease from Kelly to Jewett as tenant.

It was contended the lease was invalid for uncertainty. The lease demised "all the messuage and tract of land situate in the County of Wabash and the State of Indiana, viz: . . . . together with all the buildings, improvements and appurtenances, etc." The trial court found for the plaintiff. The judgment was reversed. The Court said:

"We are of the opinion that the lease was

> wholly void for uncertainty. If such a defect can be supplied by parol proof, the statute of frauds is of no avail. The proof would more than alter or vary the terms of a deed; it would make one, which, independent of such proof, could have no operation whatever."

In *Wilson* vs. *Johnson* (1895) 145 Ind. 41, 44, the Court said:

> . . . It has often been held, by this and other courts, that deeds purporting to convey lands which do not describe or designate the lands, are invalid for uncertainty."

Many other Indiana cases announce the rule that conveyances containing no description are invalid for uncertainty.[2]

C.

It was held by the Circuit Court of Appeals that the lease was not void for uncertainty.

Mrs. Maier, petitioner, on July 27, 1937, at McClurkin's request, appeared before a notary, signed and acknowledged a partly printed, partly written, and partly blank lease form, to the back of which was pinned or clipped a typewritten sheet, similar to PX 2, containing land descriptions. The lease form did not refer to the typewritten sheet nor did the typewritten sheet

---

[2] *Edens* vs. *Miller* (1896) 147 Ind. 208, 211;
Balwin, et al. vs. *Kerlin, et al.* (1874) 46 Ind. 426, 431-432;
Feichter vs. *Korn* (1918) 70 Ind. App. 205;
Ridgway vs. *Ingram* (1875) 50 Ind. 145, 147-148;
Porter vs. *Byrne* (1858) 10 Ind. 146, 148;
Miller vs. *Campbell* (1875) 52 Ind. 125, 127.

refer to the lease form. The mere pinning or clipping of the sheet of land descriptions to the back of the lease form and the signing of only the lease form does not make a binding lease contract. To be a valid and binding lease under Indiana law the instrument containing the descriptions must be clearly referred to and identified by the contract signed by Mrs. Maier.[3]

In *Pulse, et al.* vs. *Miller, et al.* (1881) 81 Ind. 190, 191, 192, the complaint of the appellants was based upon a contract providing in part as follows:

> " 'The parties of the first part having this day conveyed certain lands situate in Liberty Township, Shelby County, Indiana, in part, agree to have the same completed within twenty days, or pay the parties of the second part the sum of five hundred dollars, and the parties of the second part agree to comply with the contract on completion of the deeds, or pay to the parties of the first part the sum of five hundred dollars.' "

The Court said:

> "A contract for the conveyance of lands must describe the property upon which it is intended to operate. If there is no description of the land, the statute (of frauds) prohibits the enforcement of the agreement. * * *
>
> "Recourse can not be had to parol evidence to supply a description of the land intended. 'Land, for instance, which is purported to be bargained for, must be so described that it may be identified.' * * *

---

[3] *Feichter* vs. *Korn* (1918) 70 Ind. App. 205, 210; *Edens* vs. *Miller, et al.* (1896) 147 Ind. 208, 211.

"Another author says: 'Nor can parol evidence be received to supply anything which is wanting in the writing, to make it the written agreement on which the parties rely.' * * *

"It is not necessary that the description should be contained in one of a series of instruments; if, taking all the instruments in the series together, the description appears, it will be sufficient. In order that this should be so, the instrument must be clearly referred to and identified by the contract signed by the party sought to be charged. *Wills* vs. *Ross*, 77 Ind. 1; *Ridgeway* vs. *Ingram*, supra. There is no identification of the deeds referred to in the contract under examination. The connection between the deeds and the contract can only be established by parol evidence, and where this is so the contract is within the statute. * * *

" 'Under this statute, which is copied from that of Charles the 2d, the instrument of writing, whatever may be its form, must either show on its face, or by reference to some other instrument, every material part of a valid contract on that subject such as the names of the parties, a description of the land, the amount of the purchase-money, etc.' "

In *Ridgway* vs. *Ingram* (1875) 50 Ind. 145, 147, 148, one Truesdell recovered judgment for the foreclosure of a mortgage against one Miles. The judgment was assigned to appellee who also obtained a judgment against Miles for the foreclosure of another mortgage on the same and other lands. Orders of sale were issued on the judgments. On the order of sale issued on the

first judgment which was assigned to appellee, the sheriff endorsed the following memorandum:

> *"Sold to Asa J. Ridgway, for twenty-four hundred dollars. October 16th, 1869.*
>
> *"J. D. Phelps, Sheriff L. C.*
>
> *"By Wm. H. H. Whitehead, Dep'y."*
>
> "The above memorandum is all the evidence there was, except such as was oral, that Ridgway purchased the land at sheriff's sale."

This case was instituted by the appellee against appellant for failing to pay the purchase money claimed to have been bid by appellant on the property. One of the questions presented was whether the above memorandum is a sufficient contract, memorandum or note thereof, within the statute of frauds.

> "The memorandum endorsed upon the order of sale, but without any reference to it for the ascertainment of the thing sold, is no better than if it had been made on any other piece of paper. * * *
>
> "It seems to be well settled, that a memorandum, in order to make another writing a part thereof, so as to constitute a part of the contract, must refer to such other writing; and that parol proof of the connection of the papers is not admissible to establish a contract required by the statute of frauds to be in writing."

Wilstach vs. *Heyd* (1889) 122 Ind. 574, 578, 579, was an action for damages for the alleged breach of a contract for the sale of a lot. Appellant alleged defend-

ants sold and agreed to convey to him certain real estate owned by them, which was described as follows:

> "Lot No. 14 on Ekin Avenue in the City of New Albany."

It is further alleged that George Heyd for himself and as agent of the other defendants, made, executed, and delivered to the plaintiff, a memorandum of the transaction signed by Heyd for himself and as an agent, which recited the receipt from plaintiff of $200 as part purchase money of a lot. On the back of the memorandum appeared the following:

> "The lot No. 14 Ekin Avenue."

No other or further description of the land appears upon the memorandum. A demurrer was sustained to plaintiff's amended complaint. The Court said:

> "It appears from the complaint that the only pretended description of the real estate, which it is alleged was sold by defendants to the plaintiff, is endorsed on the back of the memorandum. There is no description at all in the body of the instrument. It is contended by counsel for appellant that this can make no difference, that it must be treated as a part of the written instrument, and that it would be good even if the description was written on another and different paper. It is probably true that the description is the same as if it appeared on another paper, and if such description was sufficient and properly referred to and identified in the body of the written instrument, or memorandum, signed by the party, it would probably be sufficient; but this question has been settled by a decision of this court."

There is no reference of any kind in the lease form to the land descriptions which were pinned or clipped to the back thereof, nor is there any reference of any kind in the descriptions to the lease form. The lease form neither refers to nor identifies the land descriptions.

The trial court in the instant case found as a fact that the lease form did not refer to the descriptions nor did the descriptions refer to the lease form. (Findings No. 7 and 8, R. 127, 128.) These findings are supported by uncontradicted evidence. (R. 41, PX 1, R. 41, offered R. 41; R. 45, PX 2, R. 45, offered R. 45.)

D.

The Circuit Court of Appeals held that the lands of petitioner were sufficiently identified in the list of descriptions to be demised to respondent's assignor.

Some of the land descriptions relied on by respondent are: "Pt of Fract. Sect. 36 T 2 SR 14 W containing 49.40 acres, Pt. of W ½ of NW ¼ Sec. 4 T 3 SR 13 W containing 1.00 acres, Pt. fr. Sec. 6 T 3 SR 13 W containing 62.99 acres."[4] (R. 19, 20, 45, 46, 47, 50, 51.)

Under Indiana law descriptions such as those set out above, relied on by respondent, are insufficient to demise land.

In *Craven, et al.* vs. *Butterfield, Receiver et al.* (1881) 80 Ind. 503, 509, appellee, as receiver of a firm,

---

[4] Many other similar insufficient descriptions appear in the descriptions prepared by respondent's assignor. (PX 2, R. 45, offered R. 45; PX 5, R. 46, 47, offered R. 47; PX 6, R. 50, 51, offered R. 50.)

brought suit to reform and foreclose a mortgage executed by one Williamson, a member of the firm, and his wife, to the firm to secure Williamson's note for $2,000.00.

The amended first paragraph of the complaint averred the amount due and unpaid. The description of the land in the mortgage is as follows:

> "Twenty-seven acres, fractional section fifteen (15), town eight (8) south, of range eleven (11) west."

Two of the defendants who claimed an interest in the land, answered jointly that the description in the mortgage was so vague and indefinite that the record of the mortgage was no notice to them. The jury found for the plaintiff. The two defendants, with one Craven and wife, appealed. In holding the description of the mortgage inadequate, the Court said:

> "The mortgage from Williamson to Craven, Schenck & Co., was clearly void for want of certainty in the description of the land. It was said by Elliott, J., giving the opinion of the court, in *Rucker* vs. *Steelman*, 73 Ind. 396, that 'it is a familiar rule, that the part of the deed describing the premises conveyed shall be construed with the utmost liberality. It is not the office of a description to identify the land, but to furnish the means of identification.' But the description in Williamson's mortgage furnishes no means of identification; it is impossible to determine, by the words of the mortgage, where in section fifteen the twenty-seven acres are, or in what shape they are. *Guy* vs. *Barnes*, 24 Ind. 345;

> *Nolte* vs. *Libbert*, 34 Ind. 163. A complaint founded solely upon such a mortgage, and seeking a decree of foreclosure only, would be bad upon demurrer."

First National Bank of Centreville vs. *Gough, et al.*, (1878) 61 Ind. 147, 151, was a suit to correct an alleged mistake. Gough owed certain monies and gave a mortgage to secure the payment of the same. The land upon which the mortgage was given was described in the mortgage as follows:

> "West middle division of S. E. quarter, section 21, township 16, range 12, containing 95 acres."

After the above mortgage was recorded but before the foreclosure, various judgments by third parties were obtained and Gough made an assignment for the benefit of his creditors to one Kepler. It was alleged that the creditors were chargeable with and had notice of the intention of said parties to said mortgage, as to the property to be covered by it. It was asked that the mortgage be corrected by inserting certain words respecting its being the home farm of Charles T. Gough. A demurrer was sustained; judgment rendered. In affirming the judgment, the Court pointed out:

> "There does not appear to have been any fraud, surprise or mistake in copying the description. The parties, in preparing the mortgage, did just what they intended to do. The mortgage was delivered immediately upon its execution, was received by the cashier for the bank, and the next day delivered to the recorder of the county. Two years after the execution of the mortgage, it was placed in the hands of an

agent for foreclosure, and a decree of foreclosure was obtained. In the meantime, interests in the land supposed to be mortgaged had been acquired by third persons.

"The mistake, it thus appears, in the preparation of the mortgage, was one of law, arising from the negligence of the parties in failing to acquire information as to the requisite description of the land to be inserted in the mortgage. They inserted a description such as they approved, but two years afterward found it was not full enough to identify the land, and now pray the court to insert for them such an addition as will effect such identification, and this after interests have been acquired by third persons in the land."

In *Thompson, et al.* vs. *Griffith* (1922) 79 Ind. App. 60, appellee brought a complaint for damages for breach of a contract of sale of real estate. The real estate was described in the contract as follows:

"The southwest quarter (1/4) of the southeast quarter of Section 23, 12, 3 containing 40 acres more or less. Also part of the west half of the northeast quarter of Section 26, 12, 3 containing 43.62 acres, more or less."

A demurrer was filed to the complaint based upon the indefinite and uncertain description in the agreement, and stating that it was insufficient under the statute of frauds. The demurrer was overruled; answers filed; trial had; judgment for appellee. It was pointed out that:

"There is no averment in the complaint that the 43.62 acres was all of the real estate owned

> by the appellee in said west half, etc. It is impossible from the description given to determine where in such west half, the 43.62 acres are located."

The Court reviews many cases, and in reversing the judgment and ordering the trial court to sustain the demurrer, the Court said:

> "It will readily be seen that there are two lines of cases, the one line containing descriptions that are consistent but incomplete, and that such descriptions may be completed, and the land identified, without introducing a new description; while in the other line of cases the description cannot be completed and the land identified, without making a new description and a new contract for the parties."

The case at bar falls clearly within the second line of Indiana cases above referred to in that many of the descriptions upon which responded relies, such as those set out as illustrative, cannot be completed and the land identified without making a new contract.[5]

E.

The cases relied on in the majority opinion by the Circuit Court of Appeals, viz: *Howards* vs. *Adkins*, 167 Ind. 184; *Calton* vs. *Lewis*, 119 Ind. 181; *Torr* vs. *Torr*, 20 Ind. 118; *Tewksbury* vs. *Howard*, 138 Ind. 103, fall within the first class of cases referred to in *Thompson* vs. *Griffith* (1922) 79 Ind. App. 60, cited above. They are cases wherein the completion of the descriptions did

---

[5] *Buchanan* vs. *Whitam* (1871) 36 Ind. 257;
Shoemaker vs. *McMonigle* (1882) 86 Ind. 421, 422, 423;
Howell, et al. vs. Zerbee (1866) 26 Ind. 214.

not require that a new description be introduced. Such is not this case: first, because there were no descriptions in the lease form signed by petitioner on June 12 or July 27, 1937; second, the descriptions on the typewritten sheet pinned or clipped to the lease form signed on July 27, 1937, neither referred to the lease form nor were referrd to in the lease form; third, many of the descriptions appearing on the typewritten sheet insufficiently identified the land to demise it without making a new description.

F.

The alteration of the descriptions pinned or clipped to the lease form by substituting different and in some instances entirely new land descriptions (Appendix A) voided the lease if one existed, which is denied, at least to debar respondent of any affirmative relief based on such a pretended lease. The Circuit Court of Appeals held otherwise (R. 206).

As shown by Appendix A (p. 35) many of the descriptions on PX 2 (the list pinned or clipped to the lease form signed by petitioner) recited the acreage as being less than the acreage shown in PX 3, the list of descriptions as changed and altered.

As also shown by Appendix A, PX 3 contains four entirely new descriptions of land tracts none of which appeared in PX 2 in any manner, and which contained in the aggregate 201 acres.

In addition, PX 3 contained completely new descriptions of tracts not legally or sufficiently described in PX 2.

An unauthorized alteration such as here is presumptively fraudulent in Indiana.

> *Cochran* vs. *Nebeker* (1874), 48 Ind. 459, 462;
> *Busjahm* vs. *McLean* (1891), 3 Ind. App. 281, 283.

In *Robbins* vs. *Magee, et al.* (1881) 76 Ind. 381, 392, a deed of conveyance which had been altered was held to debar the parties from relief based on the deed.

The Court said:

> "The appellees are grounding their claim to affirmative relief upon a deed which, according to the undenied allegation of the complaint, was fraudulently altered by them. There is a broad distinction between a case where a party asserts a right to have judicial assistance, and founds his right upon a deed wrongfully altered in a material part, and a case where his adversary seeks to divest a vested title, upon the ground that, subsequent to the time such title vested, the grantee wrongfully altered the deed. Professor Greenleaf says: 'If the estate lies in grant, and can not exist without deed, it is said that any alteration by the party claiming the estate will avoid the deed as to him, and that therefore the estate itself, as well as all remedy upon the deed, will be utterly gone.' 1 Greenleaf Evidence, sec. 568. * * *
>
> "To permit the appellees to secure the relief sought would be to furnish them a remedy upon an instrument which they themselves had fraudulently altered, and would be allowing them to enforce a right dependent entirely upon a contract which by their own wrongful act they had so changed as to make it essentially different from that which the parties actually executed.

> It has been often held that no action or defense can be maintained upon an instrument which has been altered in a material part, and, upon the same principle, it must be held that no affirmative defense can be maintained upon a deed which has been fraudulently altered, by the party by whom the alteration was made. * * *
>
> "We may remark, by the way, that there are very many cases to the effect, that any fraudulent alteration of a deed made by the grantee will avoid it, whether the alteration is of a material or an immaterial part."

The trial court found the facts in favor of petitioner in respect of the pretended lease being void. Each finding is supported by ample evidence as is shown in the summary of facts in the petition (pp. 3-9).

> "The provisions of the new procedural rules that the findings of fact of the trial judge are to be accepted on appeal unless clearly wrong (Rule 52 (a), 28 U. S. C. A., following section 723 c), is but the formulation of a rule long recognized and applied by courts of equity."

Guilford Const. Co. vs. *Biggs* (1939, C. C. A. 4) 102 F. (2d) 46, 47;

Adamson vs. *Gilliland*, 242 U. S. 350, 353.

G.

Judge Major, in a concurring opinion, believed the petitioner was estopped to deny the validity of the lease. (R. 206.) Respondent did not show that it relied on any conduct or any statement made by petitioner.

On the contrary, the testimony shows (a) respondent did not know until it made its selection December 20, 1938, one day before this suit was commenced, which of the leases it would acquire under the McClurkin option of August 24, 1937 (R. 72-73); (b) nothing additional was done by respondent as a result of conversations by respondent's representatives with petitioner. (R. 79-81.)

The rule in Indiana respecting estoppel is stated aptly in *Hosford* vs. *Johnson* (1881), 74 Ind. 479, 485. It is there said:

> "To constitute an esoppel by conduct, there must be:
>
> "1. A representation or concealment of material facts.
>
> "2. The representation must have been made with knowledge of the facts.
>
> "3. The party to whom it was made must have been ignorant of the truth of the matter.
>
> "4. It must have been made with the intention that the other party should act upon it.
>
> "5. The other party must have been induced to act upon it."

In *Pabst Brewing Co.* vs. *Schuster* (1913), 55 Ind. App. 375, 381, the Court said:

> "One who insists upon the acts of another as working an estoppel must show that he acted upon the same, and was influenced thereby to do

> some act which would result in an injury if that other is permitted to gainsay or deny the truth of what he did."

Respondent did not discharge the burden of making the requisite showing.

H.

Had this case been before the Indiana Supreme Court we submit that it would have held the pretended lease invalid on the evidence presented and the rules laid down in the Indiana cases cited in this brief. No argument advanced or no case cited by the Circuit Court of Appeals persuades otherwise.

> (See *Equitable Life Insurance Co. of Iowa* vs. *Halsey Stuart & Co.* (1941) 85 L. ed. (adv.) 631, 640.)

WHEREFORE, petitioner prays that the writ be granted.

WILLIAM H. THOMPSON,
Indianapolis, Indiana,

ALLEN K. SWANN,
Evansville, Indiana,

ARTHUR S. WILSON,
CLAUDE A. SMITH,
VANDEVEER & KINTNER,
Princeton, Indiana,

PERRY E. O'NEAL,
PATRICK J. SMITH,
Indianapolis, Indiana,

Counsel for Petitioner.

EXHIBIT A

PX 2[7]

PX 2 (R. 46) is first list (unsigned) of purported land descriptions found by the court only from parol testimony to have been pinned or clipped to the back of the partly printed, partly written, and partly blank lease form, which lease form was acknowledged by petitioner on July 27, 1937.

Petitioner has added these numbers for clarity and convenience of reference	Exact Wording of Description	Description Altered in PX3*	PX 3 Item No.	Total amount of acreage owned by Mrs. Main the partic subdivisio the Secti which t item is to be a p
(1)	Fraction in 31 T 2 S R 13 W 9.22 A	✓	No. 26	143.13
(2)	S½ 21 T 3 S R 13 W 200 A	✓ As to acreage	No. 20	320.00
(3)	Pt NE¼ T 3 S 13 W 120 A (Forest Reserve)	✓	?	?
(4)	Pt NW¼ 21 T 3 13 W 81 A (Forest Reserve)	✓ To E½ of NW	By Changing No. 21	80+ A
(5)	Pt SE¼ 20 T 3 S 13 W 120 A	✓	No. 15 No. 16	120 A
(6)	E½ NE¼ Sec 28 T 3 R 13 W 80 A	X*	No. 17	80 A
(7)	NW¼ NE¼ 28 S 3 R 13 W 40 A (Forest Reserve)	X*	No. 18	40 A
(8)	NE¼ NW¼ 28 3 S R 13 W 40 A (Forest Reserve)	X*	No. 19	40 A
(9)	Freaction Sec 1 T 3 S R 14 W 40 A (Forest Reserve)	✓	No. 6	102.71 A
(10)	Pt Lots 1-2-3-4 Sec 11 T 3 S R 14 W 139.75 A	✓	No. 5	175.20 A
(11)	NW fr ¼ 12 T 3 S R 14 W 18.82 A	✓	No. 7	177.51
(12)	W½ NE¼ Sec 12 T 3 S R 14 W 80 A	X*	No. 8	80.00
(13)	NE¼ NE¼ 12 3 S R 14 W 40 A	Probably X*	No. 13	40.00
(14)	W½ SW¼ Sec 12 T 3 S R 14 W 80 A (Forest Reserve)	X*	No. 9	80.00
(15)	Pt SW¼ NW¼ Sec 13 T 3 S R 14 W 16.30 A	✓	No. 12	40.00
(16)	NW¼ NW¼ Sec 13 T 3 S R 14 W 40 A	X*	No. 11	40
(17)	S½ fr Sec 14 T 3 S R 14 W 58.01 A	Altered as to acreage	No. 1	80.40
(18)	S½ N½ Sec 14 T 3 S R 14 W 52.50 A	See PX3 No. 2 except acreage		144.5
(19)	Lot 1 & 2 Sec 14 T 3 S R 14 W 77.65 A	See PX3 No. 3 except acreage		117.3
(20)	Lot 2 (for res) Sec 7 T 3 S R 13 W 69.40 A	X*	No. 14	56.3
(21)	Lot 1 (for res) Sec 7 T 3 S R 13 W 19.75 A	X*	No. 13	19.7
(22)	Fraction Sec 6 T 3 S R 13 W 57.98 A	See PX3 No. 25 except as to acreage		32.6
(23)	Pt E½ SW¼ Sec 16 T 3 S R 13 W 40 A	✓	No. 27	80.0
(24)	Pt SE¼ Sec 16 T 3 S R 13 W 40 A	✓	No. 28	160

PX 3

PX 3, which is an entirely new and differ
on face of partly written, partly printed
Mrs. Maier July 27, 1937, as recorded, as
identified and unsigned first list, which fi
was clipped to lease form without refere
PX 2 and said pasting of PX 3 were do
Maier, petitioner.

Total amount of acreage owned by Mrs. Maier in the particular subdivision of the Section of which this item is said to be a part.	Petitioner has added these numbers for clarity and convenience of reference	Exact Wording of Description	or s s
143.13 A	(1)	S½ of frct sec 14 T 3 S R 14 W Containing 82.31 Ac.	Ex
320.00 A	(2)	S½ of N½ Frct Sec 14 T 3 S R 14 W Containing 52.50 Ac.	
?	(3)	Lots 1 & 2 in Sec 14 T 3 S R 14 W Containing 77.65 Ac.	
80+ A	(4)	Pt of fract Sec 36 T 2 S R 14 W Containing 49.40 Ac.	Sin
120 A	(5)	Lots 1, 2, 3, 4, Sec 11 T 3 S R 14 W Containing 190.75 Ac.	
80 A	(6)	Pt of Sec 1 T 3 S R 14 W (fraction) Containing 82.32 Ac.	
40 A	(7)	NW frt Sec 12 T No. 3 S R 14 W Containing 132.25 Ac.	
40 A	(8)	W½ of NE¼ Sec 12 T 3 S R 14 W Containing 80.00 Ac.	
102.71 A	(9)	W½ of SW¼ Sec 12 T 3 S R 14 W Containing 80.00 Ac.	
175.20 A	(10)	NE¼ of NE¼ Sec 12 T 3 S R 14 W Containing 40.00 Ac.	
177.51 A	(11)	NW¼ of NW¼ Sec 13 T 3 S R 14 W Containing 40.00 Ac.	
80.00	(12)	SW¼ of NW¼ Sec 13 T 3 S R 14 W Containing 40.00 Ac.	
40.00	(13)	Lot No. 1 and fract NE¼ of W Fract ½ of Sec 7 T 3 S R 13 W Containing 75.00 Ac.	
80.00	(14)	Lot No. 2 in Sec 7 T 3 S R 13 W Containing 40.00 Ac.	
40.00	(15)	E½ of SE¼ Sec 20 T 3 S R 13 W Containing 80.00 Ac.	
40	(16)	NW¼ of SE¼ Sec 20 T 3 S R 13 W Containing 40.00 Ac.	
80.40	(17)	E½ of NE¼ Sec 28 T 3 S R 13 W Containing 80.00 Ac.	
144.55	(18)	NW¼ of NE¼ Sec 28 T 3 S R 13 W Containing 40.00 Ac.	
117.30	(19)	NE¼ of NW¼ Sec 28 T 3 S R 13 W Containing 40.00 Ac.	
56.37	(20)	S½ Sec 21 T 3 S R 13 W Containing 320.00 Ac.	Sar acre
19.70	(21)	E½ of NW¼ Sec 21 T 3 S R 13 W Containing 80.00 Ac.	
32.68	(22)	NW¼ of NE¼ Sec 21 T 3 S R 13 W Containing 40.00 Ac.	
80.00	(23)	S½ of NE¼ Sec 21 T 3 S R 13 W Containing 80.00 Ac.	
160	(24)	Pt of W½ of NW¼ Sec 4 T 3 S R 13 W Containing 1.00 Ac.	

— PX 3[s] ——————————→

w and different list of purported land descriptions pasted
ly printed and partly blank lease form acknowledged by
recorded, as alteration of PX 2 after detachment of un-
st, which first list Court found only from parol testimony
hout reference or identification. Both the detaching of
3 were done without the knowledge or consent of Mrs.

	✔ Same or substantially same as in 1st list	This new description is apparently a substitute for description in the 1st list. Item No.	(a) Not mentioned in the 1st list in any manner or (b) nature of alterations
1 Ac.	Except acreage	No. 17	Change in acreage
0 Ac.	✔ No. 18		
5 Ac.	✔ No. 19		
) Ac.	Similar No. 35	No. 35	
5 Ac.	Altered	No. 10 No. 30	New description for partial descriptions
2 Ac.	Altered	No. 33 No. 9 No. 29	New description
5 Ac.	Altered	No. 11	Acreage increased
0 Ac.	✔ No. 12	No. 31 (?)	
0 Ac.	✔ No. 14		
0 Ac.	✔ No. 13	No. 31 (?)	
0 Ac.	✔ No. 16	No. 32 (?)	
0 Ac.		No. 32 No. 15	
0 Ac.	✔ No. 21		**"and fract. NE¼ of W. fract. ½ of" was added to No. 21 in PX2**
) Ac.	✔ No. 20		
) Ac.	Altered	No. 5	**"E½" entirely new**
) Ac.		No. 5	**"NW¼" entirely new**
) Ac.	✔ No. 6		
) Ac.	✔ No. 7		
) Ac.	✔ No. 8		
) Ac.	Same except acreage No. 2	No. 2	
) Ac.	Altered	No. 4	**"E½" entirely new**
0 Ac.	New		**Entirely new tract**
0 Ac.	New		**Entirely new tract**
0 Ac.	New		**Entirely new tract**
9 Ac.	Altered	No. 22 No. 34	Acreage increased
7 Ac.	Altered	Similar to No. 28	

(19)	Lot 1 & 2 Sec 14 T 3 S R 14 W 77.65 A	See PX3 No. 3 except acreage		117.30
(20)	Lot 2 (for res) Sec 7 T 3 S R 13 W 69.40 A	X*	No. 14	56.37
(21)	Lot 1 (for res) Sec 7 T 3 S R 13 W 19.75 A	X*	No. 13	19.70
(22)	Fraction Sec 6 T 3 S R 13 W 57.98 A	See PX3 No. 25 except as to acreage		32.68
(23)	Pt E½ SW¼ Sec 16 T 3 S R 13 W 40 A	✓	No. 27	80.00
(24)	Pt SE¼ Sec 16 T 3 S R 13 W 40 A	✓	No. 28	160
(25)	S½ NE¼ Sec 16 T 3 S R 13 W 80 A	X*	No. 29	80
(26)	N½ SE¼ Sec 22 T 3 S R 13 W 80 A	X*	No. 31	80
(27)	E½ SW¼ (For res) Sec 22 T 3 S R 13 W 80 A	X*	No. 32	80
(28)	Fraction Sec 31 T 2 S R 13 W 34.25 (forest reserve)	See PX3 No. 26 except acreage		150.65 A
(29)	Fraction Sec 1 T 3 S R 14 W 44 A (forest reserve)	See PX3 No. 6 See Also No. 9 This List except acreage		102.71
(30)	Pt lots 1, 2, 3 and 4 S 11 T 3 S R 14 W 51 A	See Also No. 10 This List ✓ See Also No. 5 PX3		175.20
(31)	Pt N½ Sec 12 T 3 S R 14 W 216.63 (Forest reserve)	✓	No. 8 No. 10	306.56
(32)	Pt NW¼ Sec 13 T 3 S R 14 23.70 A (forest reserve)	✓	No. 11 No. 12	80
(33)	Pt S½ (forest reserve) Sec 1 T 3 S R 14 W 24.30 A	✓	No. 6	51.35
(34)	Fraction Sec 6 T 3 S R 13 W 5 (Forest reserve)	✓	No. 25	32.88
(35)	Fraction Fraction Sec 36 T 3 S R 14 W 49.40 A (Forest reserve)	✓	No. 4	150.65
(36)	E½ SE¼ Sec 21 T 3 S R 13 W 80 A (Forest reserve)	X*	No. 20	80
(37)	Pt NE¼ SW¼ Sec 16 T 3 S R 13 W 40 A (Forest reserve)	✓	No. 27	40
(38)	E½ SE¼ NW¼ SE¼ Sec 16 T 3 S R 13 W also NW¼ SE¼ same section 120 A (Forest reserve)	✓	No. 28	160
(39)	Pt S½ Sec 21 T 3 S R 13 W Sec 21 T 3 S R 13 W 40 A (forest reserve)	✓	No. 20	320
(40)	Pt SW¼ SW¼ Sec 16 T 3 S R 13 W 40 acres (Forest reserve) being a total in all of 2,568.66 Acres	✓	No. 30	40

56.37	(20)	S½ Sec 21 T 3 S R 13 W	Containing 320.00 Ac.	Same exc acreage N
19.70	(21)	E½ of NW¼ Sec 21 T 3 S R 13 W	Containing 80.00 Ac.	Alterec
32.68	(22)	NW¼ of NE¼ Sec 21 T 3 S R 13 W	Containing 40.00 Ac.	New
80.00	(23)	S½ of NE¼ Sec 21 T 3 S R 13 W	Containing 80.00 Ac.	New
160	(24)	Pt of W½ of NW¼ Sec 4 T 3 S R 13 W	Containing 1.00 Ac.	New
80	(25)	Pt fr Sec 6 T 3 S R 13 W	Containing 62.99 Ac.	Alterec
80	(26)	Pt fr Sec 31 T 2 S R 13 W	Containing 43.47 Ac.	Alterec
80	(27)	E½ SW¼ Sec 16 T 3 S R 13 W	Containing 80.00 Ac.	Alterec
50.65 A	(28)	SE¼ Sec 16 T 3 S R 13 W	Containing 160.00 Ac.	Alterec
02.71	(29)	S½ of NE¼ Sec 16 T 3 S R 13 W	Containing 80.00 Ac.	✓ No.
175.20	(30)	SW¼ of SW¼ Sec 16 T 3 S R 13 W	Containing 40.00 Ac.	Alterec
306.56	(31)	N½ of SE¼ Sec 22 T 3 S R 13 W	Containing 80.00 Ac.	✓ No.
80	(32)	E½ of SW¼ Sec 22 T 3 S R 13 W	Containing 80.00 Ac.	✓ No.
51.35	(33)	W½ of SW¼ Sec 22 T 3 S R 13 W	Containing 80.00 Ac.	New
32.88				
150.65				
80				
40				
160				
320				
40				

[7] (R. 45, offered R. 45) PX 2 is first list (unsigned) of pu found by the court only from parol testimony to have beer back of the partly printed, partly written, and partly blan form was acknowledged by petitioner on July 27, 1937.

[8] (R. 46, offered R. 46) PX 3, which is an entirely new and land descriptions pasted on face of partly written, partly lease form acknowledged by Mrs. Maier July 27, 1937, as PX 2 after detachment of unidentified and unsigned first found only from parol testimony was clipped to lease fo identification. Both the detaching of PX2 and said pasting out the knowledge or consent of Mrs. Maier, petitioner.

[9] Where description unaltered in 2nd list (PX 3) except by "containing" we have placed an X mark in this column.

New		**Entirely new tract**
Altered	No. 22 No. 34	Acreage increased
Altered	Similar to No. 28	
Altered	No. 23 No. 37	**"E½" entirely new**
Altered	No. 24 No. 38	Altered by combining two void descriptions
✓ No. 25		
Altered	No. 40	Changed from void to legal description
✓ No. 26		
✓ No. 27		
New		**Entirely new tract**

nsigned) of purported land descriptions
ıy to have been pinned or clipped to the
ınd partly blank lease form, which lease
ıly 27, 1937.

irely new and different list of purported
written, partly printed and partly blank
y 27, 1937, as recorded, as alteration of
unsigned first list, which first list Court
ped to lease form without reference or
nd said pasting of PX 3 were done with-
r, petitioner.

X 3) except by the addition of the word
this column.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

AMANTA S. MAIER,
Petitioner,
vs.
THE CONTINENTAL OIL COMPANY,
Respondent.
No. 326.

BRIEF OF THE RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

WILLIAM H. ZWICK,
Ponca City, Oklahoma,
T. MORTON McDONALD,
DOUGLAS H. McDONALD,
Princeton, Indiana,
JOSEPH H. IGLEHART,
Evansville, Indiana,
Counsel for Respondent.

ELVIN H. HEWINS,
Evansville, Indiana,
Of Counsel.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

SUBJECT INDEX.

Page

Statement of the case 1

Summary of argument 8

Argument 10

First question presented 10

Second question presented 11

Third question presented 16

Fourth question presented 19

Fifth question presented 22

Conclusion 24

Appendix 25

Cases Cited.

Allen v. Powell (1917), 65 Ind. App. 601, 615-616 23

Automobile Underwriters v. Camp (1940 Sup. Ct. Ind.), 27 N. E. (2d) 370, 373 14

Block v. Sherman (1941 App. Ct. Ind.), 34 N. E. (2d) 951 ..... 8, 14

Busjahn v. McLean (1891), 3 Ind. App. 281, 283 19

Calton v. Lewis (1889), 119 Ind. 181, 183-184 ..... 17, 18

Craven v. Butterfield (1881), 80 Ind. 503, 513 19

Duckwell v. Kisner (1893), 136 Ind. 99, 101 23

First National Bank etc. v. Gough (1878), 61 Ind. 147, 151 17

General Talking Pictures Corp. v. Western Electric Co. (1938), 304 U. S. 177, 178 ..... 22, 23

Koons v. Burkhart (1918), 68 Ind. App. 30 ..... 8, 16

Lesh v. Johnston Furniture Co. (1938), 214 Ind. 176, 184, 13 N. E. (2d) 708, 711 16

Pulse v. Miller (1881), 81 Ind. 190, 191, 192..... 12
Ridgway v. Ingram (1875), 50 Ind. 145, 147, 148..... 12
Robbins v. Magee et al. (1881), 76 Ind. 381, 392-394..20, 21
Smith v. Ostermeyer Realty Co. (1935), 102 Ind. App. 164 .....8, 13, 14
Spencer etc. Club v. Bartmess (1919), 70 Ind. App. 294, 303 23
Spitler, Admr., v. James (1869), 32 Ind. 202, 210..... 23
Vincennes Savings and Loan Ass'n v. St. John et al. (1938), 213 Ind. 171, 180.....23, 24
Whipperman v. Dunn (1890), 124 Ind. 349, 357-358.... 17
Wilstach v. Heyd (1889), 122 Ind. 574, 578..... 12
Warner v. Marshall (1906), 166 Ind. 88.....8, 13

Statutes Cited.

Burns' Indiana Statutes Annotated 1933:
Sec. 33-101..... 12
Secs. 32-301 to 32-319..... 19
Sec. 32-301..... 25
Sec. 32-302..... 25
Sec. 32-303..... 25
Sec. 32-304..... 25
Sec. 32-312..... 27
1 R. S. 1852, Sec. 1, Ch. 42, Burns' Indiana Statutes Annotated 1933, Sec. 33-101..... 12

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1941.

AMANTA S. MAIER,
Petitioner,
vs.
THE CONTINENTAL OIL COMPANY,
Respondent.
No. 326.

BRIEF OF THE RESPONDENT IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI.

STATEMENT OF THE CASE.

This is an action sounding in equity for rescission and cancellation of an oil and gas lease executed by petitioner to one J. H. McClurkin in his lifetime covering lands owned by her in Gibson County, Indiana, and by him assigned for value to the respondent without notice of any defect or infirmity. The respondent filed a counterclaim seeking a declaratory judgment upholding the validity of the lease.

There was a trial in the district court by the court without the intervention of a jury. The court made findings of facts and stated conclusions of law thereon, favorable to the petitioner. Judgment was entered thereon to the effect that the lease in question is null and void, and canceling the same, quieting petitioner's title to the real estate involved (R. 169-170), and dismissing respondent's counterclaim (R. 170-171).

On appeal by respondent to the Circuit Court of Appeals for the Seventh Circuit the judgment of the district court was reversed, Maier v. Continental Oil Co., 120 F. (2d) 237, with an opinion by Judge Kerner setting forth the facts (R. 199-206) and a concurring opinion by Judge Major (R. 206-208).

The petitioner has assumed to set forth in her petition three separately numbered statements of the "holdings" of the Circuit Court of Appeals, the third of which (probably inadvertently) includes a misstatement of the facts and of the record, to wit, "the lease was not invalidated by the act of respondent's assignor in changing the land descriptions after he had assigned the purported lease to respondent." The evidence is clear and undisputed, and the District Court found, that although the assignment of the lease in question is dated September 25, 1937 (R. 145-147), it was not executed by delivery to the respondent until some time in November, 1937 (R. 73, 145).

In the "Statement of Facts" included in her petition (p. 7) the petitioner again ignores the fact that the assignment of the lease was not delivered until "some time in November, 1937," leaving the impression that the assignment was delivered to respondent at the time of its date, to wit, September 25, 1937.

The petitioner has also assumed to set forth certain other facts in her petition under the heading "Statement of Facts," but in the opinion of respondent this statement is so incomplete and inaccurate that it does not correctly reflect the facts shown by the record.

Reference is made to "The lease form signed by Mrs. Maier on July 12, 1937, and retained by her," etc. (petition p. 5). This is simply the copy given petitioner by her lessee to be retained by her and which enabled her to be informed at all times as to just what she had signed. It is

not the lease which the Court of Appeals held valid and is not involved in any question of law decided by that court.

It is claimed that "the pasting" of the corrected descriptions to the face of the lease "was done without the knowledge or consent of the petitioner" (petition p. 6). True the "pasting" was done on September 29, 1937 (R. 200), without the prior knowledge of the petitioner; but true also her "lessee" wrote her a letter on September 28, 1937 (R. 48, 200), which she received on September 30, 1937 (R. 48, 53, 128, 200), telling her of the substitution of the corrected descriptions and enclosing her an exact copy thereof, and asking her to attach it to her copy of the lease "as the enclosed description is the one that will go on record" (R. 48, PX 4-A, offered R. 48). Petitioner put the list of corrected descriptions so received by her (PX 4-B, R. 48, offered R. 48) away with her copy of the lease (R. 58). Petitioner did not reply or write any letter in answer to said letter of McClurkin (R. 59).

Petitioner calls attention to the record in the recorder's office having been altered after recording (petition p. 8), but fails to state the fact that as so altered the record in the recorder's office is exactly like the lease (PX 3, R. 46-47, offered R. 46) and the corrected description sent to the petitioner by McClurkin and kept by her (PX 4-B, R. 48, offered R. 48).

Petitioner states (petition p. 9) that in December, 1938, E. J. Bergundthal, a lease buyer for respondent, called on petitioner bringing with him seven leases for petitioner's land. She neglects to state that this call was in response to an inquiry or request from her (R. 81-82, 85-86) in regard to a question of "selling royalty"; that the leases were not new leases, but simply "split up" the acreage into seven different tracts and all bore the original date, provided for the same royalty and delay rentals and were identical in terms with the original lease (R. 54-56).

Petitioner says (petition p. 9): "On petitioner's instructions the leases were taken to her attorney (R. 87). Petitioner refused to sign and execute these leases to respondent (R. 88, 89)." She neglects to state that an appointment was made by her and her attorney to discuss these new leases and the effect of a pro-rating clause with Bergundthal at the office of her attorney on December 16, 1938, but that the discovery well in the vicinity of this lease was drilled in on December 14, 1938, and plaintiff canceled the appointment and brought this suit on December 21, 1938 (R. 87-89).

The majority opinion of the Circuit Court of Appeals by Judge Kerner contains a statement of the salient facts involved in the case, which statement is borne out by the record and is not controverted by petitioner on any essential point. The facts so stated are as follows:

> "Appellee was the owner of more than 2,500 acres of land in Gibson County, Indiana, and on July 12, 1937, agreed with one J. H. McClurkin to give him an oil and gas lease upon the same (R. 40, 57, 82, 87). McClurkin at that time prepared a lease, in duplicate, without descriptions and left one copy with appellee (R. 40). July 27, 1937, at the request of McClurkin, she went before a notary public and executed the other copy of the lease, the body of which at that time contained no descriptions, but which had a paper containing various descriptions of real estate clipped or attached in some fashion to the back of it (R. 45-47). The list of descriptions attached to the lease was the same as a list delivered a few days earlier by McClurkin to the appellee with instructions to attach to her copy of the lease (R. 44-46). Appellee left the executed lease with the notary for delivery to McClurkin (R. 46, 62). September 28, 1937, McClurkin wrote the appellee as follows:
>
> > "'At the suggestion of the Abstracter corrections were made in descriptions in lease you exe-

cuted to us so as to eliminate mention of Forest reservations, and we ask that you kindly attach the enclosed corrected description on your copy of the lease, as the enclosed description is the one that will go on record.

"'We wish to thank you for your spirit of co-operation and we assure you that we shall do everything in our power to discover any oil pools in that area.

"'With kindest regards from both Mrs. McClurkin and myself, I beg to be

Most sincerely yours,

J. H. McClurkin.'

"Enclosed with his letter was a purported, corrected copy of descriptions exactly the same as a copy that was then placed in the body of the executed lease at the instance of McClurkin, in lieu of the list attached to the back of the lease (R. 47-48). Appellee received this letter on September 30th (R. 53). September 29th McClurkin, after removing the list of descriptions attached to the back of the lease and after having caused the corrected list of descriptions to be attached to the face of the executed lease, filed the same for record (R. 46-47).

"In Plaintiff's Exhibit 2 (the list clipped to back of executed lease) there are found at least fifteen separate descriptions, such as: 'Pt. NE¼ T 3 S 13 W 120A; Pt. NW¼ 21 T3 13 W A 1 A; Pt. SE¼ 20 T. 3 S 13 W 120-A' (R. 45). In the corrected list of descriptions, attached to the executed document (referred to throughout this proceeding as plaintiff's Exhibit 3) there are at least five similar descriptions. Examples are: 'Pt. of Sec. 1 T3 SR 14 W, containing 82.32 acres; Pt. of fract. Sec. 36 T. 2 SR 14 W containing 49.40 acres; Pt. of W. ½ of N. W. ¼ Sec. 4 T 3 SR 13 W, containing 1 acres' (R. 46-47).

"All descriptions had been obtained and prepared by McClurkin pursuant to his arrangement with the

appellee on July 12, 1937, when the forms of lease, except for descriptions, had been filled out (R. 40). At the time of the execution of the lease there had been no oil or gas development in the vicinity of the lands in question (R. 57), but thereafter McClurkin entered into negotiations with the appellant (R. 65-69, 84-85), and by a contract, dated August 24, 1937, granted appellant the privilege of conducting certain surveys upon the lands in question (R. 107-110). September 25, 1937, McClurkin executed an assignment of the lease to appellant (R. 50, 52). At the time of the assignment appellant knew nothing of any changes or alterations of descriptions in the lease (R. 70). This assignment was filed for record December 27, 1938 (R. 52).

"The lease provided, among other things, that if no well be commenced on the lands by July 12, 1938, the lease should terminate unless lessee should on or before that day pay to the lessor's credit in the Peoples Bank and Trust Company at Mt. Vernon, Indiana, the sum of $256.90, which should operate as a rental and cover the privilege of deferring commencement of a well for twelve months from said date (R. 46, 42). June 6, 1938, pursuant to the lease, appellant deposited to the credit of the appellee with said bank the sum of $256.90 which the bank credited to her account, and mailed a duplicate deposit slip to appellee showing that that amount had been deposited by appellant to appellee's credit and the purpose for which it was deposited (R. 73-74, 101-102). Appellee denied receipt of this (R. 96), but she did, however, each month receive from the bank a statement of her account, which showed all deposits to her account (R. 96). December 22, 1938, appellee, asserting that she for the first time gained personal knowledge of this payment, instructed the bank to return same to the appellant and the bank, accordingly, did so (R. 96, 102-103), but the appellant refused to accept it and redelivered same to the bank (R. 103-104). At the time of the execution of the lease McClurkin paid appellee $1.00, which she returned to McClurkin just prior to bringing this suit, but which

McClurkin likewise redelivered to appellee (R. 97, 100).

"From July, 1938, appellant, with the knowledge of appellee, carried on exploratory work in the nature of drilling core holes on the land covered by the lease and other lands in Gibson and Posey Counties, Indiana, at an expense of about $10,000 (R. 76-78, 79-81, 97-99). As a result of appellant's operations, a discovery well was brought in in the Gibson County oil field (not on appellee's land) December 14, 1938, and seven days later, on December 21, 1938, she filed the present suit (R. 57, 89). During this period and during the progress of the exploratory work appellee met and spoke to various representatives of appellant but, upon express instructions from her attorneys, intentionally refrained from disclosing to them the fact that she considered the lease invalid (R. 99, 79, 81, 86).

"In November, 1938, appellee sent for appellant's representative (R. 97). In response to her message two representatives called on her separately in December (R. 81, 85). She discussed with each of them the question of the sale of royalty on her land in Gibson County (R. 81, 82, 85, 86). She was informed by one of the representatives of the advantages of leases with prorating clauses and she had him take seven forms of leases to her attorney (R. 86, 87, 99). Arrangements were made for a conference to be held on December 16th between her and appellant's agent at her attorney's office, but the discovery well came in on December 14th and appellee canceled the appointment (R. 87-89).

"Plaintiff's Exhibit 2, attached to the back of the lease at the time of execution, recited a total acreage of 2568.66 (R. 45), and plaintiff's Exhibit 3, the lease with corrected descriptions, as recorded, recited a total of 2569.63 (R. 46-47). The corrected descriptions describe the same lands averred by plaintiff in her amended complaint to be the lands owned by her in Gibson County, which she could not more accurately

describe because no survey thereof had been made for her, and these lands are further averred to be the lands attempted to be described in the recorded lease (R. 4-6).

"The corrected descriptions include all of appellee's lands in Gibson County and describe the lands by sections, townships and ranges and by lots, and with acreage in the respective tracts, all as designated in the government survey. A survey made for appellee a few days prior to the trial of the case showed that the acreage had by accretion been augmented 393.54 acres over the acreage recited in plaintiff's Exhibit 3" (R. 63-65). *(Record references supplied.)*

SUMMARY OF ARGUMENT.

No special or important reasons have been shown why certiorari should be granted, nor does it appear that the Circuit Court of Appeals has decided an important question of local law probably in conflict with applicable local decisions.

I. No question was decided as to the petitioner's undelivered copy of the lease.

II. The land descriptions on the sheet attached to the lease form when it was executed were a part of the executed lease within the Indiana Statute of Frauds, because the lease form sufficiently referred to those descriptions, and also because the attachment of the sheet made the two attached papers one instrument. **Smith v. Ostermeyer Realty Co. (1935), 102 Ind. App. 164; Warner v. Marshall (1906), 166 Ind. 88; Block v. Sherman (1941 App. Ct. Ind.), 34 N. E. (2d) 951.**

III. As to the descriptions questioned, the lease is not subject to cancellation, since certain descriptions therein are admittedly valid. **Koons v. Burkhart (1918), 68 Ind. App. 30.** As to any incomplete descriptions therein, they

can be and were completed by oral proof; the portions of fractional sections described include all of the acreage, as shown by the government survey, in those fractional sections situated in Gibson County, Indiana; and the tracts in forest reserve are identifiable from county records.

IV. The alteration of the land descriptions was made to conform the instrument to the agreement and intention of the parties, involved no fraud, and neither rendered the lease invalid nor prevented respondent from asserting its rights under the lease. Cases relied on by petitioner are not in point.

V. The applicability of the doctrine of estoppel against petitioner, as stated in the concurring opinion of Judge Major, has not been raised in the petition for the writ, and that doctrine being shown to be applicable justifies the denial of the writ.

ARGUMENT.

The question arises at the outset whether this is a case where certiorari should be granted in any event. The facts presented do not show, and petitioner has not pointed out, any special and important reasons, such as are required by Rule 38 (5) of this court, why certiorari should be granted. Neither does it appear that the Circuit Court of Appeals has decided an important question of local law probably in conflict with applicable local decisions within the provisions of the same rule.

It is submitted that the following argument and the Indiana authorities cited, which deal with each question petitioner has sought to raise, in the same order presented by petitioner, show the decision of the Circuit Court of Appeals is in accord, rather than probably in conflict, with applicable Indiana decisions.

I.

The first question which is claimed to be presented in the petition for certiorari [p. 10, subd. (a)] is whether the Circuit Court of Appeals disregarded the applicable Indiana law in deciding that "the partly printed, partly written and partly blank lease form signed by petitioner, containing no description of the land purportedly leased, is valid and binding." No such question was discussed or decided by the Circuit Court of Appeals. That court, after stating that petitioner claimed the lease was void for lack of any description, proceeded to discuss and determine "whether the paper containing the descriptions attached to the lease is a part of the lease" (R. 203-204). This first question sought to be presented by petitioner is not in fact presented, and the Circuit Court of Appeals did not, as claimed, refuse to follow the three Indiana cases cited under subdivision (a) on page 11 of the petition, which cases hold a lease containing no descriptions invalid.

The argument in petitioner's brief on this question (subdivision B, pp. 17-19 of petitioner's brief) refers solely to the lease form signed by petitioner on July 12, 1937 (R. 40, PX 1, R. 41-44, offered R. 41), which was a copy left with and retained by petitioner (R. 40), who fastened and kept attached to it (R. 58) the copy of the original descriptions (PX 2, R. 45, offered R. 45). In her brief on this point petitioner claims that this is the lease held by the court to be valid. Such is not the case. The lease referred to by the court which it held to be valid was the original lease which was signed and acknowledged by petitioner July 27, 1937, before a notary public in Griffin, Indiana (PX 3, R. 45-46, 133-137, offered R. 46). That original lease was delivered to the original lessee, J. H. McClurkin (R. 62), and that is the lease which the Circuit Court of Appeals held valid because, when executed, it did contain descriptions of real estate, since the typewritten sheet of land descriptions then attached to it and referred to in it was a part of the lease.

II.

The second question claimed to be presented in the petition for certiorari [p. 10, subd. (b)] is that the Circuit Court of Appeals disregarded the applicable Indiana law in deciding:

> "That the typewritten sheet of land descriptions pinned or clipped to the signed lease form which is not referred to in the lease form or which typewritten sheet makes no reference to the lease form, constitutes a valid and binding lease."

The Indiana Statute of Frauds provides, in part, that:

> "No action shall be brought in any of the following cases * * *
>
> "unless the promise, contract or agreement upon which such action shall be brought, or some memo-

randum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some person thereunto by him lawfully authorized, excepting, however, leases not exceeding the term of three (3) years."

Sec. 1, Ch. 42, 1 R. S. 1852, Burns' Indiana Statutes Annotated 1933, Sec. 33-101.

The cases relied upon by petitioner are cases claimed by petitioner to hold that descriptions contained in an instrument other than the contract of conveyance must be clearly referred to and identified by the contract signed by the party sought to be charged to be binding on such party under the Indiana Statute of Frauds [petition pp. 11-12, subd. (b)].

Those cases[1] as well as any other similar Indiana cases relied on (note 2, p. 19, petitioner's brief) all recognize the rule which is well settled in Indiana, that an instrument consisting of two separate writings is sufficient to comply with the Indiana Statute of Frauds and constitutes a single instrument if the signed writing refers to the other so that the intention to unite them appears, although only one of them is signed. That is what the Circuit Court of Appeals held in this case. The references in the lease proper to the real estate "described as follows" and "the above described land" and "said described land" were held to amount to sufficient references to the descriptions on the unsigned sheet attached to make them a part of the signed lease (R. 203-204).

The Circuit Court of Appeals further held (R. 203-204) that even if such references alone had not been sufficient, parol evidence properly established the fact that the descriptions on the attached sheet were intended to be and

1 Pulse v. Miller (1881), 81 Ind. 190, 191, 192;
Ridgway v. Ingram (1875), 50 Ind. 145, 147, 148;
Wilstach v. Heyd (1889), 122 Ind. 574, 578.

were a part of the signed lease. This was in accordance with the following applicable Indiana decisions, which hold that where the reference in one instrument to another is indefinite, parol evidence may be introduced to show what instrument is referred to and intended to be incorporated in the agreement:

Smith v. Ostermeyer Realty Co. (1935), 102 Ind. App. 164, 169, 197 N. E. 743, 745, 747;
Warner v. Marshall (1906), 166 Ind. 88, 107-110.

In **Smith v. Ostermeyer Realty Co. (1935), 102 Ind. App. 164, 169, 197 N. E. 743, 746,** a lease not signed by defendant was attached to a written guaranty which defendant did sign by which he agreed to guarantee the performance of the lease, which lease was inaptly referred to in the guaranty as "the lease hereinabove mentioned." In fact, it had not been mentioned before, although it was attached to the guaranty. It was held that the terms supplied by the lease were properly read into the guaranty. The court, in its opinion, said:

> "It has been held that the requirements of the statute are satisfied if the papers constituting the contract are physically joined, or the intention to unite them appears on the face of the papers. Graham v. Henderson Elevator Co. (1916), 60 Ind. App. 697, 111 N. E. 332. See, also, Olcott v. McClure (1912), 50 Ind. App. 79, 98 N. E. 82.
>
> "Parol evidence will be received for the purpose of showing contemporaneous facts, circumstances surrounding the parties, delivery of the contract and reason therefor. Beckwith v. Talbot (1877), 95 U. S. 289, 24 L. ed. 496; 27 C. J., Secs. 475 and 477, p. 384."

In the case of **Warner v. Marshall (1906), 166 Ind. 88, 107, 109, 110,** there had been extended correspondence relative to what was to be conveyed to plaintiff under certain conditions, and it was held that the various writings were

properly admitted in proof of the agreement. The court, in its opinion, said:

> "Where the reference is very general, and therefore indefinite, parol evidence may be introduced to show what instrument was referred to (citing cases). According to Bauman v. James, supra, it is sufficient, although the writing does not contain an express reference, if it can be said in the light of the facts that the prior writing, and nothing else, could have been referred to. Even where there is no direct reference to a prior writing, and the connection is not shown by parol evidence, the character of the writings may still be such as to show, upon their face when placed in juxtaposition, that they are connected (Beckwith v. Talbot [1877], 95 U. S. 289, 24 L. Ed. 496; Grafton v. Cummings [1878], 99 U. S. 100, 25 L. Ed. 366), and we are of opinion that we are within the cases in holding that a reference in general terms to an agreement or understanding may in some circumstances be inferred to have had reference to the only written agreement or understanding which is produced on either side upon trial (citing cases)."

The decision of the Circuit Court of Appeals that the descriptions on the sheet fastened to the lease constituted a part of the lease which petitioner signed and acknowledged is also supported by the rule of law recognized and applied in Indiana cases to the effect an unsigned writing attached to a signed writing at the time it is signed is a part of it and together they satisfy the statute of frauds.

Block v. Sherman (1941 App. Ct. Ind.), 34 N. E. (2d) 951, 953, 954;
Smith v. Ostermeyer Realty Co. (1935), 102 Ind. App. 164, 169, 197 N. E. 743, 746, 747;
Automobile Underwriters v. Camp (1940 Sup. Ct. Ind.), 27 N. E. (2d) 370, 373.

The case of **Block v. Sherman, 34 N. E. (2d) 951, 953, 954,** was decided by the Appellate Court of Indiana June 24,

1941. The opinion makes it plain that, while two writings which are not attached will not satisfy the statute of frauds unless there be some reference to the unsigned writing in the writing which is signed, that rule does not apply where the two writings are physically attached at the time of signing, since they constitute a single instrument. The court in its opinion said:

> "It is also well established that a memorandum may consist of several writings, although one writing only is signed, if the signed writing is annexed to the other writing by the party to be charged, or the signed writing refers to the unsigned writing so as to make it a part of the instrument which refers to it. * * *
>
> "In Browne on the Statute of Frauds, 5th Ed., Sec. 346b, on page 470, the author states: * * * 'It seems also that one signature may apply not only to the paper on which it is written, but also to another which at the time of signing was attached to it in such a way as to indicate that the whole was intended to be recognized by the signer as one paper.'"

Repeated claims by petitioner (p. 24 of her brief at the end of subdivision C) that there was no reference in the lease form to the attached descriptions wholly ignore the references specifically pointed out by the Circuit Court of Appeals in its opinion (R. 203).

The actual physical attachment of the descriptions to the signed lease at the time of execution is a circumstance which cannot be disregarded. Even if physical attachment did not in itself make the attached writing a part of the signed writing, that circumstance in the case at bar, taken together with the references in the signed writing and the fact that the descriptions are of land in the county named in the lease, show plainly as a matter of common sense that the two writings in fact constitute a single instrument. The petitioner and her attorneys in her amended complaint took the same view, and pleaded (R. 7) that the

lease as originally executed had the original descriptions inserted in its face in the appropriate place for them following the words: "described as follows, to wit:". This averment was not denied, but was expressly admitted, in respondent's answer (R. 17-18). As an admission by petitioner in her pleading this averment is to be taken as true without reference to any other evidence which may have been adduced, and she should be bound thereby. **Lesh v. Johnston Furniture Co. (1938), 214 Ind. 176, 184, 13 N. E. (2d) 708, 711.**

III.

The third question sought to be presented in the petition [petition p. 10, subd. (c)] is whether the Circuit Court of Appeals disregarded applicable Indiana law in deciding:

> "That land descriptions such as 'Pt of Fract. Sect. 36 T 2 SR 14 W containing 49.40 acres'; 'Pt. of W. ½ of NW ¼ Sec. 4 T 3 S R 13 W containing 1.00 acres'; 'Pt. fr. Sec. 6 T 3 S R 13 W containing 62.99 acres,' are sufficient identifications of land to demise it" (R. 204-205).

A. All but five of the thirty-three descriptions included in the corrected list attached to the face of the lease when recorded (PX. 3, R. 46-47, offered R. 46), were entirely complete descriptions according to section, township and range. No more sufficient descriptions of such tracts could possibly have been furnished.

For the lease to be valid it is not necessary that there be more than one valid description, and uncertainty in other descriptions would not make the entire lease invalid.

> **Koons v. Burkhart (1918), 68 Ind. App. 30, 37, 119 N. E. 820, 821-822.**

B. While it is not essential that there be more than a single sufficient description in the lease, under the facts disclosed by the record in this case the descriptions at-

tacked by petitioner in her petition [pp. 10-11, subd. (c)] were and are sufficient.

The cases relied on by the Circuit Court of Appeals (R. 204-205) sustain its conclusion that as to such questioned descriptions evidence which was admitted completed these descriptions and identified the property in question.

Much reliance is placed by petitioner (her brief, pp. 26-27) on the early case of **First National Bank etc. v. Gough (1878), 61 Ind. 147, 151,** which held a mistake in a description to be a mistake of law and not subject to correction. That case and similar early cases have been expressly overruled on this point. In the case of **Whipperman v. Dunn (1890), 124 Ind. 349, 357-358,** the Supreme Court of Indiana said:

> "It is contended by appellee, however, that the mistake in the description of the land covered by the mortgage set up in the cross complaint, was a mistake of law, and not a mistake of fact. In support of this position he cites Baker v. Pyatt, 108 Ind. 61, * * *; First Nat'l Bank etc. v. Gough, 61 Ind. 147, * * *
>
> "The case of Baker v. Pyatt, supra, is not an authority in favor of the position of the appellee. The other cases cited have been so far modified by subsequent decisions of this court that they can no longer be regarded as authority upon the questions now before us. Keister v. Myers, 115 Ind. 312; Calton v. Lewis, 119 Ind. 181."

Calton v. Lewis (1889), 119 Ind. 181, 183-184, cited by the Circuit Court of Appeals, was a case where suit was brought for breach of warranty in a deed which described one tract of land, but which omitted the name of the state (Tennessee) where the land was located. The court, in its opinion, said:

> "That part of a deed or contract which relates to the description of the premises should be liberally construed, so as to make the instrument available (Han-

non v. Hilliard, 101 Ind. 310), and a court will only declare a deed void for uncertainty when, after resorting to oral proof, it still remains mere matter of conjecture what was intended by the instrument. Roehl v. Haumesser, 114 Ind. 311, and cases cited. The omission to repeat the name of the state, after the recital that the land was situate in the County of Lawrence, was not, as is contended, a mistake of law. It is an error to suppose that a written instrument can only be corrected where the mistake results from the omission or insertion of words different from those agreed upon, or contrary to the expressed intention of the parties. It is a mistake of fact when, through ignorance, inadvertence, negligence or otherwise, the description in a deed does not in fact embrace the land which the parties intended it should, and which they supposed it did. The inquiry in such a case must be, what was the subject of the contract, not what words were agreed upon as descriptive of the land. Baker v. Pyatt, 108 Ind. 61; Keister v. Myers, 115 Ind. 312."

The undisputed evidence shows that the lands conveyed by deed from Virginia Miller on May 1, 1936 (DX 8, R. 91, offered R. 91), to petitioner and her husband who had since died (R. 96) were conveyed by the same descriptions as those in the corrected list pasted on the face of the lease as recorded (PX 3, R. 46-47, offered R. 46); and it is averred by petitioner in her amended complaint (R. 4-6) that the identical lands sought to be described in the lease as recorded are the lands owned by petitioner, which averment is admitted by respondent in its answer (R. 17-18).

It certainly cannot be contended that "after resorting to oral proof it still remains mere matter of conjecture what was intended by the instrument." Therefore an Indiana court will not declare the instrument void for uncertainty. **Calton v. Lewis (1889), 119 Ind. 181, 183**, quoted above.

C. Some of the descriptions questioned by petitioner [petition p. 10, subd. (c)] are of parts of fractional sec-

tions on the Wabash River, and these fractional sections have only parts of them in Indiana, all in Gibson County. Such descriptions describe and give accurately the acreage of such parts of those particular fractional sections as are in Gibson County, Indiana, exactly as shown in the government surveys, of which surveys and acreage the courts take judicial notice. **Craven v. Butterfield (1881), 80 Ind. 503, 513.** These descriptions are therefore sufficient.

D. The tracts described as "forest reserve" or "for. res." in the original list of descriptions (PX 2, R. 45, offered R. 45) covered tracts classified under, and accurately identifiable from public records required by, the Indiana Forestry Act of 1922, Burns' Indiana Statutes Annotated 1933, Sec. 32-301 to 32-319. (See Appendix.)

IV.

The fourth question said to be presented in the petition for certiorari [p. 11, subd. (d)] is whether the Circuit Court of Appeals disregarded applicable Indiana law in deciding "That the altering in a material respect of the land descriptions without petitioner's knowledge or consent did not invalidate the purported lease so as to bar respondent from affirmative relief."

The court concluded from the evidence and all reasonable intendments to be drawn therefrom that the alteration was made simply for the purpose of making the lease conform to the original intention of the parties (R. 206), and petitioner does not question this conclusion. Under such circumstances McClurkin was "impliedly authorized" to make the correction and previous actual consent to the alteration was not necessary. **Busjahn v. McLean (1891), 3 Ind. App. 281, 283.** An alteration for this purpose did not invalidate the lease under well established law in Indiana. Petitioner has cited no case to the contrary.

The fourth reason relied upon in the petition for the writ [p. 12, subd. (d)] is that the Circuit Court of Appeals

decided an important question of local law in conflict with applicable decisions of the appellate courts of Indiana, in that it refused to follow an Indiana decision said by petitioner to hold that "The material alterations of the descriptions made by McClurkin are presumptively fraudulent as to grantor-petitioner, and respondent can maintain no affirmative defense thereon," citing **Robbins v. Magee et al. (1881), 76 Ind. 381, 392-394.** That case does not so hold. The holding there is simply that it was error to overrule a demurrer to an answer which failed to deny or avoid an allegation in the complaint that certain of the defendants fraudulently altered a deed. Such failure was held to amount to an admission that the alteration was fraudulent. The court stated that a party could not secure affirmative relief upon an instrument which he had fraudulently altered. The case cited does not involve any question of presumption of fraud arising from an alteration, nor does it state any such rule. It merely deals with a situation where fraud was admitted. That case is not applicable because the situation in the present case involves no fraud. The district court made no finding that McClurkin's act in altering the lease was fraudulent; and the Circuit Court of Appeals in its opinion stated:

> "The argument of appellee, however, that the alterations were conceived in iniquity and amounted to fraudulent afteration of the instrument, we do not believe was warranted. The evidence with all reasonable intendments to be drawn therefrom points forcefully to the conclusion that McClurkin's acts in undertaking to correct the descriptions were merely for the purpose of carrying out the original intention of the parties" (R. 206).

The evidence fully supports this conclusion of the court. The very fact that McClurkin wrote petitioner a letter informing her of the alteration and enclosing an exact copy of the list of descriptions constituting the alteration

negatives any fraud (R. 47-48, 59). Petitioner does not contend otherwise, but seeks to rely upon a presumption of fraud upon the authority of a case which does not state any such rule. The Circuit Court of Appeals did not refuse to follow the decision of the Indiana court, **Robbins v. Magee et al. (1881), 76 Ind. 381, 392-394,** cited in the petition.

The brief cannot supply any deficiency in the petition, which is specifically limited in this instance to the holding of the single case cited (Petition p. 12). The other cases cited in section F of the argument in petitioner's brief (p. 30) speak of a presumptively fraudulent act, but there is no basis for a presumption of fraud in this case because the alteration was made to conform the instrument to the intention of the parties. The fact is there was no fraudulent act. **Robbins v. Magee et al. (1881), 76 Ind. 381, 392,** again is cited and quoted from, although it involved a situation where fraud was admitted, and all of the rules stated therein are based upon the fact that the alteration was admittedly fraudulent.

Nor is it a valid objection to the holding of the Circuit Court of Appeals on this point to say that some of the descriptions in the new list attached to the face of the lease were new and different. The only question is whether the new list brings the instrument into conformity with the intention of the parties to lease all of petitioner's lands in Gibson County, Indiana. The Circuit Court of Appeals states the fact to be that petitioner agreed to give McClurkin a lease on all her lands in Gibson County, Indiana (R. 199), and that the parties intended that the lease include all such lands (R. 204), and that the corrected descriptions include all petitioner's lands in Gibson County (R. 202).

We are unable to see the connection between the point here considered and the statement in petitioner's brief

(p. 31) that "The trial court found the facts in favor of petitioner in respect of the pretended lease being void." It did not so find. It made no finding with respect to any question of fraud, or on the question of the alteration being made to conform to the intention of the parties. Uncontroverted facts, omitted from petitioner's "statement of facts," clearly show the lease was valid.

V.

The petitioner's petition for the writ does not contain:

(a) Any statement of any question presented upon the concurring opinion of Judge Major that the petitioner is estopped to deny the validity of the lease;

(b) Any reason relied on for the writ based upon the ground that the concurring opinion of Judge Major to the effect that the petitioner is estopped to deny the validity of the lease is in conflict with the applicable decisions of the appellate courts of Indiana.

In this state of the record, no question is presented under subdivision G of "Argument" in petitioner's brief (Petitioner's brief pp. 31-33).

On petition for certiorari, the Supreme Court's consideration of the case is limited to the questions properly presented by the petition for the writ.

General Talking Pictures Corp. v. Western Electric Co. (1938), 304 U. S. 177, 178.

Both the opinion of Judge Kerner (R. 206) and the opinion of Judge Major (R. 206-208) show that the doctrine of estoppel was relied upon by respondent. The latter opinion will not be presumed to be contrary to the applicable law of Indiana, and petitioner has not properly presented any question with reference to this matter. Since Judge Major's opinion sustains the decision in favor of respondent, and is not properly questioned by the petition, this alone justifies the denial of the writ.

If, however, the specifications in the supporting brief can be relied upon to add to or expand the questions stated in the petition, contrary to the holding of the court in **General Talking Pictures Corp. v. Western Electric Co. (1938), 304 U. S. 177, 178,** the opinion of Judge Major, holding the petitioner estopped to deny the validity of the lease, is not in conflict with, but is entirely in harmony with, the decisions of the Supreme and Appellate Courts of Indiana upon that subject.

As pointed out by Judge Major: "In this connection it must be remembered that the defendant, as assignee of the lease, purchased the same in good faith for a valuable consideration and relied upon the record, which it had a right to do."

The assignment of the lease in question was not consummated until "some time in November, 1937" (R. 73), at which time it had been of record in Gibson County, Indiana, with the corrected descriptions, since September 29, 1937 (R. 46-47). Thereafter, on June 6, 1938, respondent deposited to petitioner's credit, in the bank designated by her in the lease as depository therefor, the sum of $256.90 as rental according to the terms of the lease (R. 73-74, 101-102), and from July, 1938, on until this action was commenced respondent was engaged in exploratory work at considerable expense, to the knowledge of petitioner and without protest or objection on her part (R. 76-78, 79-81, 97-99).

Clearly, under the authority cited in Judge Major's opinion (R. 208), **Vincennes Savings and Loan Ass'n v. St. John et al. (1938), 213 Ind. 171, 180,** as well as other applicable Indiana decisions, petitioner is estopped.[2]

---

2 **Spitler, Admr., v. James (1869), 32 Ind. 202, 210;**
Allen v. Powell (1917), 65 Ind. App. 601, 615-616;
Duckwell v. Kisner (1893), 136 Ind. 99, 101;
Spencer etc. Club v. Bartmess (1919), 70 Ind. App. 294, 303.

In conclusion, while petitioner's action "sounds in equity" there is nothing in the record which should appeal on petitioner's behalf to the conscience of a court of equity. Judge Kerner, in the majority opinion, calls attention to the fact that while petitioner met and talked with various representatives of the respondent during the time exploratory work was being carried on, "upon express instructions from her attorneys" she "intentionally refrained from disclosing to them the fact that she considered the lease invalid" (R. 201). In the opinion of Judge Kerner: "It would be inequitable and unjust to allow appellee, under the facts in the instant case, to take advantage of the fact that the list of descriptions had not been fastened and attached to the body of the lease" (R. 204). Judge Major, in his concurring opinion, clothes the same idea in the following language: "Under these circumstances, and others which might be related, it is my conclusion that a court of equity should not be utilized so as to enable the plaintiff to cancel the instrument in controversy, when she, by her acts and conduct, is largely, if not entirely, responsible for her asserted predicament. Vincennes Savings & Loan Ass'n v. St. John et al., 213 Ind. 171, 180; * * *" (R. 207-208).

It is, therefore, respectfully submitted that the petition for the writ of certiorari should be denied.

WILLIAM H. ZWICK,
Ponca City, Oklahoma,
T. MORTON McDONALD,
DOUGLAS H. McDONALD,
Princeton, Indiana,
JOSEPH H. IGLEHART,
Evansville, Indiana,
Counsel for Respondent.

ELVIN H. HEWINS,
Of Counsel.

APPENDIX.

The applicable portions of the Indiana statute governing designation and classifying of lands for forestry purposes, referred to at the end of subdivision IV of the Argument, which was enacted in 1921 and appears in Burns' Indiana Statutes Annotated 1933, as Sections 32-301 to 32-319, inclusive, read as follows:

"32-301. Forest lands classified for taxation. For the purpose of taxation, certain forest lands, hereinafter defined as 'forest plantations' and 'native forest lands,' shall be classified and assessed as provided in this act. • • • (Acts 1921, ch. 210, Sec. 1, p. 567.)"

"32-302. 'Forest plantations' and 'native forests' defined. Any piece or parcel of land to be classified as forest plantation shall have growing thereon the following number of healthy, living timber trees per acre: • • • (Acts 1921, ch. 210, Sec. 2, p. 567.)"

"32-303. Assessment of forest lands. All forest plantations and native forest lands shall be assessed at the rate of one dollar ($1.00) per acre for general taxation purposes. (Acts 1921, ch. 210, Sec. 3, p. 567.)"

"32-304. Application for classification. Any person or firm or corporation, wishing to have any land classified according to the provisions of this act, shall obtain application blanks from the state forester for that purpose. The state forester shall send the applicant two (2) blanks, which shall be filled out and filed as hereinafter provided before the land shall be deemed to be classified within the meaning of this act. After receiving the application blanks, the applicant shall have the parcel of land proposed for classification surveyed by metes and bounds and

located with reference to some established corner. In addition, the parcel of land shall be located as to section, township, range and county; two (2) plots of the survey shall be made in ink, and on a scale of one hundred (100) feet to the inch, such plots shall show true north, the length of each side of such parcel of land in feet and inches, the size of all inclosed angles, the magnetic bearing, and the angle of the line connecting the plot with an established corner. Each plot shall be made a part of the application; one (1) copy of the plot shall be sent to the state forester and the other shall be filed and recorded in the office of the recorder of the county in which such parcel of land is situated. The person making the survey of the tract shall fill in the necessary and appropriate part of the application and sign the same as hereinafter prescribed. The applicant shall then have the land appraised by the township assessor of the township in which such parcel of land is situated and said appraisement shall become a part of the application, and the township assessor shall sign the appraisement as hereinafter prescribed. Each application shall be signed by the owner or owners, surveyor, and the township assessor making the appraisement. The signatures of each shall be witnessed by two (2) legal voters of the county in which such parcel of land is situated. One (1) application shall be filed and be made of record in the office of the recorder of the county in which such parcel of land is located, and the second application shall be sent to the state forester. If, in the judgment of the state forester, the application and the land to be classified complies with the provisions and intent of this act, he shall at once notify the county auditor of the county in which the land is located that the land described in the application has been duly classified as a forest plantation or native forest land, as the case may be, and thereupon the auditor shall enter the same for taxation as provided for in this act. (Acts 1921, ch. 210, Sec. 4, p. 567.)"

"32-312. Signs. All parcels of land classified under this act shall be marked by four (4) signs placed on the boundary thereon (thereof) and so arranged on different sides of the tract as to be the most conspicuous to the public. Such signs shall be furnished by the department of conservation, and shall be such size and have such wording as the department of conservation may designate. (Acts 1921, ch. 210, Sec. 12, p. 567.)"